



February 11, 2022

National Security Division
Department of Justice
28 CFR Part 5
[Docket No. NSD 102]
RIN 1105–AB67

The following is in response to the [Advanced Notice of Public Rulemaking](#) (ANPRM) issued by the Department of Justice (DOJ) on December 13, 2021, on the “Clarification and Modernization of Foreign Agents Registration Act (FARA).”

Background: [InterAction](#) is a 501c3 non-profit organization. We are the largest U.S.-based coalition of international non-governmental organizations (NGOs) with more than 175 members working around the world in low- and middle-income countries, fragile and post-conflict states, and emerging economies. Member organizations are large and small, secular and faith-based, with a focus on people living in the world’s most poor and vulnerable places. Using its collective voice and convening power, InterAction seeks to shape important policy decisions and actions across a wide range of issues – including foreign aid, humanitarian relief, development, economic equity, food security, and climate change – to advance human dignity, human potential, and self-determination. InterAction serves as a platform for networked learning so that organizations across the sector can adapt and evolve their organizational cultures and operations in order to best deliver against their missions. This response is thus a reflection of InterAction’s broader non-profit and non-governmental community.

In recent years, InterAction has publicly expressed concerns about Foreign Agents Registration Act (FARA or the Act) on behalf of its membership, advocating that it should be better targeted and updated to account for today’s globalized world.¹ Many of the issues that the InterAction community has raised appear to be statutory in nature, and therefore may be beyond the scope of the ANPRM. For instance, FARA’s broad definition of “foreign principal” currently includes not just foreign governments, but also foreign humanitarian and international development organizations. Under the Act, one can become an “agent” of a foreign principal not just by acting under a foreign principal’s “direction or control,” but simply at their “request.” Additionally, activities covered under FARA are extensive and include soliciting or dispensing funds and engaging in advocacy, of any kind, in the interests of a foreign principal. This broad language could, in theory, require NGOs delivering life-saving humanitarian assistance, monitoring human rights violations, or promoting sustainability practices to register as foreign agents. Our concerns are driven, in part, by the fact that registration under FARA carries a real cost in our community, where for safety and security reasons, nonprofits must be able to maintain their neutrality and independence. Many nonprofits operate as neutral actors in crisis areas, including in war-torn and politically repressive environments. For safety and security reasons, nonprofits must maintain this neutrality and independence. Failing to do so could make nonprofits lose access to those in need, make them targets for hostile actors, and place their staff at unnecessary risk.

Response: We respectfully submit that the DOJ should amend its regulations in a manner that better reflects the intent of the Act. By identifying and focusing on certain identified foreign influence priorities, such amendments would permit the DOJ and FARA Unit to focus its enforcement efforts and limited resources on those priorities. It would also help our community more freely and more

¹ https://www.interaction.org/wp-content/uploads/2018/05/interaction_-_open_letter_to_congress_on_foreign_agent_registration_act_-_4.23.2018_1.pdf



frequently engage in our critical work across the globe responding to humanitarian crises and providing much needed development assistance, such as supporting peoples endangered and displaced by conflicts and natural disasters, combatting food and water scarcity, and defending human rights and fundamental freedoms, providing lifesaving healthcare services to disadvantaged communities, and more.

For example, InterAction would propose that the DOJ clarify the implementing regulations for [subsection 613\(d\)](#), which states:

§ 613. Exemptions: The requirements of section 612(a) of this title shall not apply to the following agents of foreign principals:

(d) Private and nonpolitical activities; solicitation of funds

(1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or

(2) in other activities not serving predominantly a foreign interest; or

(3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of subchapter II of chapter 9 of this title, and such rules and regulations as may be prescribed thereunder;

1. Though commonly called the commercial exemptions, the plain language of subsection 613(d) makes clear that exemptions are not so limited. Only subsection 613(d)(1) references commercial activity, while subsection 613(d)(3) concerns humanitarian activity outside the commercial sphere. Current regulations pertaining to subsection 613(d) are limited and only clarify the exemptions in the context of commercial activities.
2. We are also concerned about subsection 613(d)(3), which provides a humanitarian exemption for “soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering.” ***InterAction proposes that the DOJ read this humanitarian exemption broadly to include a wider array of charitable activities beyond just soliciting or collecting funds for medical aid, food, or clothing.*** Non-profits solicit funds for not only operations that fit clearly into the statute’s enumerated categories, but also many other activities that serve a similarly humanitarian purpose, such as building schools in rural areas and training teachers to providing emergency shelter for those displaced by climate change. Such activities would appear to be well within the spirit of the exemption. Additionally, funds can be combined or repurposed to fit the emerging needs of affected populations on the ground. Many in the humanitarian and international development community are thus concerned that they risk incurring a registration obligation simply by being responsive to the ever-shifting greatest needs of people in the throes of crises. Adopting a broad interpretation of this exemption would allow our community to provide greater assistance and respond to emerging crises more rapidly, without fear of compromising their appearance of neutrality and independence. InterAction submits that this type of humanitarian activity is not and should not be the focus of the DOJ and the FARA Unit.
3. The InterAction community continues to express confusion over the definition of “agent of a foreign principal.” Despite releasing a memorandum to interpret the scope of agency in 2020, the InterAction community has found DOJ guidance on the scope of agency to be confusing in a world where “requests” are frequently made across borders. For example, the “scope of



agency” memo could be interpreted to require a U.S. non-profit to register if it arranges a public awareness-raising event in the United States about an overseas humanitarian crisis if a local advocate from that country had merely requested that they do so. ***We would therefore propose that the DOJ clarify that the term “request” be grounded in the concept of having control or authority over an agent.***

4. The InterAction community continues to raise concerns in its advocacy over how U.S. FARA serves as the basis and/or justification for similarly broad [restrictive foreign agent laws abroad](#) that seek to crack down on political opposition and civic space. When considering its regulations, the DOJ may find it helpful to consult with the State Department’s Bureau of Democracy, Human Rights, and Labor, which has extensive experience addressing these types of laws abroad, in order to properly internalize the varied and nuanced U.S. foreign policy implications of shifts in FARA enforcement.

Thank you for the opportunity to submit feedback on the FARA implementing regulations [RIN 1105–AB67]. We appreciate your consideration of our requests.